SEAH HONG SAY

v.

THE HOUSING & DVPT. BOARD

HIGH COURT, SINGAPORE
YONG PUNG HOW CJ
[SUIT NO. 628 OF 1987]
1 JULY 1991

LAND LAW: *Compulsory acquisition - Exgratia payment - Statutory tenant offered alternative business premises - Claim for cash grant in lieu of alternative premises based on government statements - Plaintiff dissatisfied with amount - Proof of sole tenancy - Legitimate expectation - Legal right - Court has no jurisdiction over administrative discretion.*

On 27 April 1982, the said premises was acquired by the government under the Land Acquisition Act (the Act) for a public purpose of public housing and general development. On 16 June 1982, the defendants, a statutory body created by an Act of Parliament to develop land designated by the Ministry conducted a census of the occupants of the premises which showed that SPT Co. and SLC Co. occupied the second level. These businesses were managed by the plaintiff's sons and nephew.

On 4 March 1983, possession of the premises was taken over by the Collector of Land Revenue under s. 16 of the Act. The defendant offered the plaintiff alternative business premises for the plaintiff's occupation. The plaintiff however claimed a cash grant *in lieu* of the alternative business premises.

The defendant and the Ministry of National Development informed the plaintiff that he and the other occupants of the premises would be given an *ex gratia* grant of monies. The defendants paid the plaintiff a cash grant of $19,050 and also paid *ex gratia* cash grants in January 1985 to SLC & SPT of $14,625 each. A warrant to dispossess unlawful occupants was issued against P.

On 2 March 1987, being dissatisfied with the amount obtained, the plaintiff commenced action by writ of summons and claimed a cash grant of $76,000 *in lieu* of alternative business premises, alleging that he had informed the defendants that he did not require alternative accommodation for his business and would take the full compensation payable to businesses evicted from premises and which were not seeking alternative accomodation.

The defendants contended that the resettlement policy implemented by them was on a purely voluntary and *ex gratia* basis which gave the persons concerned no legal, contractual or other rights.

The plaintiff reiterated his contention that his legal right was based on a claim of legitimate expectation which was founded on the declared policies of the government as a result of a series of press releases issued by the government.

Held:

[1] It was neccessary for the plaintiff to prove in the first place that he had a legal right to be paid the compensation by the defendants for the business carried on by him in the premises acquired by the defendants; and, then, as to the quantum, that the whole amount of $76,000 should be paid to him as the chief tenant and sole occupant of the premises. It was a fact however that SP Co. and SLC Co. were in occupation at the second level.

[2] It requires more than imagination to say that the plaintiff can found a cause of action against the defendants based on whatever statement the government may have said in a newspaper. The plaintiff was unable to show any basis for his claim for any sums of money, whether by "legitimate expectation" or otherwise.

[3] The payments were made to the applicant *ex gratia* and not as a matter of legal right. The Court has no jurisdiction to control a purely administrative discretion. Once the board had made a determination in favour of the applicant, then legal consequences followed. If payment was made contrary to the instructions without prior determination that payment was justified under the scheme, then there would be a breach by the board.

[Plaintiff's appeal dismissed with costs.]

Cases referred to:
Attorney-General of Hong Kong v. Ng Yuen Shiu [1983] 2 AC 629 ***(dist)***
Central Control Board v. Cannon Brewery Co. Ltd. [1919] AC 744 ***(dist)***
Regina v. Criminal Injuries Compensation Board, Ex parte Lain [1967] 2 QB 864 ***(cons)***

Legislation referred to:
Land Acquisition Act (Cap 152) [Sing], s. 16

For the plaintiff - J B Jeyaratnam; M/s. JB Jeyaratnam & Co.
For the defendants - C R Rajah (Sugidha with him) M/s. Tan, Rajah & Cheah

JUDGMENT

Yong Pung How CJ:

In this case, the plaintiff claimed the sum of $56,950 or such other sum as might be found to be lawfully due to him for the balance of the compensation payable for the business carried on by him in premises which had been acquired by the defendants.

The Facts

The facts in this case were as follows. In 1962 Madam How Peng the statutory tenant of the premises at No. 21 Jalan Berseh Singapore (the premises) died. The premises comprised two levels or storeys and an attic which had two rooms called Room 1 and Room 2 respectively. On 29 September 1962, a written agreement was entered into between Madam How Peng's two sons: Seah Kah Keng and the plaintiff. By the agreement the plaintiff was to have control of the first level and the right to collect rent from the sub-tenants of Room 2. The plaintiff was to pay a rent of $30.50 per month to the then landlords, Lee Rubber Co. Ltd. Seah Kah Keng was to have control of the second level and the right to collect rent from the sub-tenants of Room 1. On the same day another written agreement was entered into between Seah Kah and the plaintiff which provided that the plaintiff's consent had to be obtained if the second level was to be used for business purposes.

On 27 April 1982 the premises were acquired by the government under the Land Acquisition Act Cap. 152 for a public purpose, namely, public housing and general development. The defendants as is well known are a statutory body created by an Act of Parliament to develop land designated by the Minister and to manage such developments in pursuance of powers granted to them under the Act. Neither the pleadings nor the documents show how the defendants became directly involved, and a preliminary point raised by defendant's Counsel as to whether they had been properly joined as defendants was held over pending clarification by the evidence to be offered.

On 16 June 1982 the defendants conducted a census of the occupants of the premises. It showed that Senco Piling and Trading Company and Soon Leong Civil Engineering Company were in occupation of the second level. These business establishments were owned by the plaintiff's sons and the plaintiff's nephew. The census also indicated that the plaintiff was in occupation of the first level of the premises.

On 4 March 1983 possession of the premises was taken by the Collector of Land Revenue under s. 16 of the Land Acquisition Act. On 19 July 1983 the defendants offered the plaintiff a list of HDB shop premises which were available as alternative business premises for the plaintiff's occupation, but the plaintiff asked instead for a cash grant as chief tenant of the premises.

Between 17 January 1984 and 9 January 1987 letters were written by the plaintiff and through his solicitors to the defendants claiming a cash grant initially of $58,500 and later, $76,000 *in lieu* of alternative business premises. The defendants and the Ministry of National Development informed the plaintiff and his solicitors that the plaintiff would be given an *ex gratia* cash grant of $14,625. This sum was later increased to $19,050 which was finally accepted by the plaintiff. The defendants had also made payment of *ex gratia* cash grants in January 1985 to both Soon Leong Civil Engineering Company and Senco Piling and Trading Company of $14,625 each.

On 2 March 1987, being dissatisfied with the amount offered, the plaintiff commenced action by writ of summons. It was common ground that the premises were acquired by the Government of Singapore; that the plaintiff claimed a cash grant of $76,000 *in lieu* of alternative business premises; that a warrant to dispossess unlawful occupant was issued against the plaintiff, and that the defendants paid the plaintiff a cash grant of $19,050. The statement of claim stated that the plaintiff informed the defendants that he did not require alternative accommodation for his business and would take the full compensation payable to businesses evicted from premises and who were not seeking alternative accommodation. The plaintiff contended that the full sum payable in such a case was $76,000. The plaintiff accordingly claimed the sum of $56,950 or such other sum as may be found to be lawfully due to him for the balance of the compensation payable for businesses evicted from premises acquired.

These claims were denied by the defendants. They contended at the trial that the resettlement policy implemented by them was on a purely voluntary and *ex gratia* basis which gave the persons concerned no legal, contractual or other right. The guidelines under the policy were applied by the defendants to provide those who satisfied the criteria for alternative accommodation with confessional rentals ranging from 3 to 5 years or alternatively a cash grant. The plaintiff elected for a cash grant and was accordingly paid $19,050 which was the sum payable to him at the sole discretion of the defendants.

The plaintiff gave oral evidence and denied the existence of the other occupiers. He said that his father had been the principal tenant of Lee Rubber Co. In the 1962 agreement, his brother was to have the second level and he was to have the first level. The second level was only for residential purposes and the first level was for business. No other business was carried on in the premises by anybody else. This was also the position in 1982 when the property was required. There were no businesses carried on there in 1982 by Senco Piling and Trading Co., Soon Leong Civil Engineering Co. or by CH Seah Trading and Construction Co. another company which claimed to be in the premises. After acquisition, he had asked for a cash grant instead of alternative premises. In 1982, he was told that he would be compensated $58,500 but the amount would be divided 4 ways. He refused. The rate was

increased to $76,000 on 8 August 1985.

The plaintiff's evidence at the trial was confusing, even if allowances have to be made for the looseness in interpretation from Chinese to English. When he was referred in cross examination to the various occupants he said that :

> They were not under my account.
>
> They only stayed in my place.
>
> It was nothing to do with me, I can't control it.

When it was put to him that there were other companies in occupation, *viz* Senco, Soon Leong, CH Seth, his answer was

> If there were intruders, I would report them. No one has the right to occupy the upper floor.

The defendants called a resettlement inspector to give evidence. Her job was to take a census of occupants of properties being disposed by acquisition. She interviewed Seah Chee Huat, of CH Seah Trading & Construction Co. She pointed out in the plans the various sites occupied. On the first level, CH Seah Trading and Construction Co. was at the place marked "21T", while the plaintiff was at the top left hand corner "21A". At the second level "21S" was Soon Leong Civil Engineering Co. and at the second level "21R" was Senco Piling and Trading Co. Her evidence under cross examination was instructive:

> Q: Were you given a list of tenants and occupiers?
>
> A: I was not given a list.
>
> Q: Did you and colleague meet Seah Cheng Boon?
>
> A: Yes.
>
> Q: Did he claim to be a tenant?
>
> A: He said he had an office there.
>
> Q: Did he say by what right or grant he was occupying part of premises?
>
> A: When he said he had office, we asked him to produce documents to prove it. He produced BR document.
>
> Q: Did he produce any rent receipt?
>
> A: No, neither on that day nor at any time after that.
>
> Q: Where did he say his office was?
>
> A: Shown on (332) (2 level), the shaded portion at back.
>
> Q: Did you look at the space?
>
> A: I did
>
> Q: Anybody working there?
>
> A: It was his own business. He was working there. Nobody else. But there was a telephone.
>
> Q: Did you check the telephone directory?
>
> A: I did not.
>
> Q: Did he show any letterheads or business documents?

A: Not during that visit, subsequently he showed them to Senior Resettlement Officer. They are in the case file.

Q: Look at (79) (Soon Leong Civil Engineering). Did Seah Cheng Boon claim interest? Second business?

A: Yes

Q: Apart from BR form, any rent receipt?

A: No, at no time.

Q: Looking at (333), Soon Leong occupied adjacent space to Senco?

A: Yes.

Q: Any partitioning to separate them?

A: No, but there were different tables.

Q: Any letterhead of Soon Leong Engineering?

A: No, but it was produced later to my superior.

Q: Did you check the telephone directory?

A: I did not.

Q: Re CH Seah Trading, you met him Seah Chee Huat on 12 March 1983?

A: Yes, I did not meet him on first visit on 16 June 1982.

Q: Did you see any business plaques?

A: No. His office was 21T in (335) on ground floor.

Q: Did you see any plaque?

A: Yes.

Q: Did he produce rent receipt etc?

A: No.

Q: Why has CH Seah not completed the lower half of (335)?

A: (335) was not done on that day. He did not come later to complete the form.

Q: Did he produce any letterhead?

A: No, only B R. (Business Registration) I do not know whether he produced any to my senior officers.

Q: Apart from visits in June 1982 and March 1983 did you visit premises again?

A: Yes, on many occassions,, I did not see people there, they had gone out to work.

Q: Look at (80), plaintiffs survey form. You visited him 17 June 82?

A: Yes (identifies plaintiff)

Q: He showed BR?

A: Yes

Q: Rent receipts?

A: No, I did not see any later.

Q: Did you understand from him he was the principal tenant of ground floor?

A: Not on that day, but later.

Q: Did he show you the agreement with his brother on (35, 36, 37)?

A: He showed them to my superior.

Q: Look at (37), did you ask him whether he had given permission to the other 3 businesses to operate there?

A: My understanding was that my duty was to survey the premises, not to ask such questions.

In my opinion, it was necessary for the plaintiff to prove in the first place that he had a legal right to be paid the compensation by the defendants for the business carried on by him in the premises acquired by the defendants; and, then, as to the quantum, that the whole amount of $76,000 should be paid to him as the chief tenant and sole occupant of the premises. The facts were crucial if the plaintiff was to establish his claim in law and show that he was the chief tenant and that no one also was in occupation. I found as a fact however that Senco Piling and Trading Company and Soon Leong Civil Engineering Company were in occupation at the second level.

As to his legal right, the plaintiff claimed that he had a legitimate expectation for compensation which was founded on the declared policies of the government. This was a reference to a series of press releases culminating in a press release dated 21 March 1985 which was published in the newspapers and contained the following appendix:

Central Area

For premises less than 200 sq m in floor area, $76,000 payable to the sole-occupier, or in the case of multi-tenanted premises, $38,00 to the chief tenant and $25,400 per subtenant subject to a maximum of $88,800 per premises. For premises larger than 200 sq m, $101,500 payable to the sole-occupier, or $50,700 to the chief tenant and $25,400 per sub-tenant subject to a maximum of $101,500 per premises.

As to his legal right based on a claim of legitimate expectation, plaintiff's Counsel relied on *Central Control Board v. Cannon Brewery Co. Ltd.* [1919] AC 744, and *Attorney General of Hong Kong v. Na Yuen Shiu* [1983] 2 AC 629. The first case did not help the plaintiff as the facts made it clear. In that case, the question raised by the appeal was whether the appellant board were empowered by virtue of the Defence of the Realm (Amendment) (No. 3) Act 1915, and the Defence of the Realm (Liquor Control) Regulations 1915, made in pursuance of that Act, to acquire compulsorily the fee simple of licensed premises belonging to the respondent company without paying compensation therefore beyond such sum as might by an act of grace be awarded to the respondent company out of public moneys, or whether the respondent company were entitled as of right to recover compensation under the Lands Clauses Consolidation Act 1845. In that case, the legal entitlement was clear, and it was merely a question of computation. In the present case, the plaintiff must first establish his entitlement and only then will the question of the amount be relevant.

In *Attorney-General of Hong Kong v. Ng Yuen Shiu*, the applicant who was born in China entered Hong Kong illegally from Macau in 1957. In 1976 he was removed to Macau but reentered illegally shortly and remained in Hong Kong. By 1980 he was the part-owner of a small factory in Hong Kong. In October 1980 the government announced changes in its immigration policy. It abandoned its "reached base" policy whereby illegal entrants had been allowed to remain once they had reached the urban areas without being arrested, and it stated that those who had entered illegally would be repatriated. It gave power to the Director of Immigration to make removal orders against them. The announcement created fears among

the illegal entrants living in Hong Kong, who had entered from Macau and who were of Chinese origin, that they would be repatriated to China. On their petitioning the governor a senior immigration officer made an announcement of the government policy which it was intended should be applied to them. That included the statement that each illegal entrant from Macau would be interviewed and his case "treated on its merits." *Having been questioned by an immigration officer, the applicant was detained and the director of immigration then made a removal order against him without giving him an opportunity of making any representations as to why he should not be removed.* (Emphasis is mine). The applicant applied to the High Court for orders of *certiorari* to quash the removal order and prohibition restraining the Director of Immigration from executing it. The Full Bench of the High Court refused the application. On the applicant's appeal the Court of Appeal granted an order of **prohibition** preventing the Director from executing the removal order until he had **given the applicant an opportunity to be heard.**

On the Attorney-General's appeal to the Judicial Committee, it was held, dismissing the appeal, that where a public authority charged with the duty of making a decision promised to follow a certain procedure before reaching that decision, good administration required that it should act by implementing the promise, provided that the implementation did not conflict with the authority's statutory duty; that, *accordingly, assuming that an alien had no general right to be heard before being deported, the implementation of the promise to interview each illegal immigrant and decide each case on the merits required the applicant to be given an opportunity to state his case and the failure to ask him whether he wished to make representations why he should not be removed was a sufficient ground for setting aside the decision;* (Emphasis is mine) and that, accordingly, the Court would substitute for the inappropriate order of prohibition an order of *certiorari* to quash the decision.

Lord Fraser said at p. 634:

> There is no doubt that the director of immigration had power under s. 19 (in the substituted form provided for in the Ordinance of 1980) to order removal of illegal immigrants. There is also no doubt that neither that section, nor any other statutory provision, expressly requires an inquiry to be held before such an order is made. *The only question raised in the appeal is whether, at common law, the applicant was eked to have a fair inquiry held before a removal order was made against him.* (Emphasis is mine).

The *Ng Yuen Shiu* case is of little assistance to the plaintiff. In that case, *certiorari* was ordered to quash the decision of the Director of Immigration which was made without giving Mr. Ng an opportunity of making representation after the statement that each illegal entrant would be interviewed and his case treated on its merits. It requires more than imagination to apply that decision to the present case and to say that the plaintiff can found a cause of action against the defendants based on whatever statement the government may have made in a newspaper.

The defendant's Counsel relied on the leading case of *Regina v. Criminal Injuries Compensation Board, Ex parte Lain* [1967] 2 QB 864. In June 1964 a scheme was promulgated under prerogative powers for the purpose of compensating victims of crimes of violence by way of *ex gratia* payments out of funds provided through a grant-in-aid. The scheme, as amended on 3 August 1965, provided for the appointment by the Home Secretary of a Criminal Injuries Compensation Board consisting of a chairman with wide legal experience and five other legally qualified members. Para. 4 provided "The Board will be entirely responsible for deciding what compensation should be paid in individual cases and their decision will not

be subject to appeal or to ministerial review." By para. 9, compensation was to be assessed on the basis of common law damages, subject, *inter alia*, to para. 11 which provided that where the victim had died, no compensation would be payable for the benefit of his estate, but the Board was entitled to entertain claims from his spouse and dependents and compensation would be payable to any person entitled to claim under the Fatal Accidents Acts 1846-1959, the amount of compensation to be governed by the same principles as under the provisions therof. By para. 13, "where applicable; the compensation will also be reduced by the amount of any payments from public funds accruing as a result of the injury or death, to the benefit of the person to whom the award is made." The scheme further provided by para. 17, for the initial decision on an application and the compensation (if any) to be offered to be made by a single member of the Board, and gave a right to an applicant dissatisfied with the decision of the single member to a hearing before three other members of the Board.

The widow of a police officer, who died as a result of injuries sustained when shot by a suspect, applied to the Board, pursuant to the scheme, for compensation for herself and her three children. The single member who heard the application took into consideration an interim award of £300 made to the constable, made a deduction in respect of National Insurance pension and allowances, but made no deduction for the amount payable to the widow by way of police pension or gratuity. He awarded the widow £300. The widow was not satisfied with the amount of the award and at a hearing held by three members of the Board it was determined, *inter alia*, that the payments from the police fund should also have been deducted and, since the total of those and the National Insurance payments to which the widow was entitled exceeded the appropriate compensation payable, the award should be reduced to nil. The widow applied for an order of *certiorari* to quash the decision for errors on the face of the record contending, *inter alia* that the Board was wrong in law in deducing any part of the National Insurance, and police pension payments having regard to paras. 9 and 11 of the scheme; and that three members had no power to reduce an award made by the single member, being able only to allow the appeal and increase the award, or to dismiss the appeal, leaving the award untouched. The Board contended, *inter alia*, that *certiorari* did not lie since the Board was not a body of persons amenable to the supervisory jurisdiction of the Court in that it did not have legal authority in the sense of statutory authority, nor did it have authority to determine questions affecting the rights of subjects in that a determination by it gave rise to no enforceable rights but gave an applicant only an opportunity to receive the bounty of Crown.

Diplock LJ said and I quote extensively from p. 883 of his judgment onwards:

> The question of jurisdiction raised by this application is one of novelty and importance.
>
> The Criminal Injuries Compensation Board is not constituted statute or statutory instrument but by act of the Crown, that is the executive government, alone. It administers on behalf of the executive government moneys granted by Parliament to Crown for distribution by way of compensation to persons who have suffered personal injury directly attributable to criminal offences, the prevention of crime, or the apprehension of offenders. So far there is nothing novel about this. *If the matter rested there no person would have any right to obtain any payment out of those moneys which would be enforceable in Courts of law by action or controllable by prerogative writ.*
>
> But the matter does not rest there. The executive government announced in Parliament and published to intending applicants a document called "The scheme." *It took the form of a statement expressed in the future tense of how the distribution of compensation to applicants would be carried out. It stated that the board would entertain applications for payment of compensation where specified conditions were fulfilled, and laid down the procedure for the*

determination by the broad of such applications. That procedure at any rate bears all the characteristics of a judicial or quasi-judicial procedure; and the board when determining applications in accordance with that procedure is clearly performing de facto quasi-judicial functions, that is, acting as an inferior tribunal. Its authority to do so is not derived from any agreement between Crown and applicants but from instructions by the executive government, that is, by prerogative act of the Crown. The appointment of the board and the conferring upon it of jurisdiction to entertain and determine applications, and of authority to make payments in accordance with such determinations, are acts of government, done without statutory but nonetheless lawful for that.

If new tribunals are established by acts of government, the supervisory jurisdiction of the High Court extends to them if they possess the essential characteristics upon which the subjection of inferior tribunals to the supervisory control of the High Court is based.

What are these characteristics? It is plain on the authorities that the tribunal need not be one whose determinations give rise directly to any legally enforceable right or liability. Its determination may be subject to *centiorari* notwithstanding that it is merely one step in a 'process which may have the result of altering the legal rights or liabilities of a person to whom it relates. It is not even essential that the determination must have that result, for there may be some subsequent condition to be satisfied before the determination can have any effect upon such legal rights or liabilities...

For the way in which it exercises its discretion as to the way in which the moneys voted by Parliament are to be distributed, the executive government, acting in this case through the Home Secretary, is responsible to Parliament alone. I would accept that, even after money had been granted by Parliament on the faith of "the scheme" as communicated of Parliament in answer to a Parliamentary question, the executive government could alter its instructions to the Board as set out in "the scheme" in any way that it chose, and that the High Court would have no jurisdiction to call in question the executive government's power to do so. *I would also accept that the executive government was entitled, as by "the scheme" it has expressly chosen to do, to make payments of compensation to applicants ex gratia and not as a matter of legal right. Its decision to do so was taken in the exercise of a purely administrative discretion which the High Court has no jurisdiction to control. The concept of ex gratia payments by the Crown to subjects is a familiar one. It gives rise to no rights in the unpaid subject to enforce payment by civil action for a money judgment or a declaration of rights (see Nixon v. Attorney-General) or by prerogative writ of mandamus (see Reg. v. Treasury Commissioners).*

True it is that having obtained the grant the executive government was not under any obligation enforceable by the Courts to distribute any part of it to any particular subject or at all. *It could have withheld or made payments in accordance with its unfettered and arbitrary executive discretion. But it chose to adopt the method of appointing a board upon which it conferred two distinct functions, one judicial in character, the other administrative. The judicial function was to determine in accordance with specified principles whether any particular applicant should be offered any money payment and, if so, how much. The administrative function was to make payments to applicants in accordance with such determinations. "The scheme" not only constituted and defined the authority of the board to make such payments but as published to applicants, was a lawful proclamation stating the conditions required to be satisfied by subjects seeking payment of compensation and requiring them as a condition precedent to the receipt of any payment to submit their claims to adjudication by the board in the exercise of its judicial functions.* It was on the faith of the proclamation that the application to the board with which the present case is concerned was made.

I see no reason in principle why the fact that no authority from Parliament is required by the executive government to entitle it to decide what shall be the form of the administrative process under which compensation for crimes of violence is paid, should exempt the board from the supervisory control by the High Court over that part of its functions which are judicial in character. No authority has been cited which in my view compels us to decline

jurisdiction. Certainly, applicants have an interest in the proper performance by the board of its judicial functions. And, despite Mr. Bridge's reference to the bounty of the Crown with its nostalgic echoes of Maundy Thursday, so has the public, whose money the board distributes to the tune of nearly a million pounds a year. *True it is that a determination of the board that a particular sum by way of ex gratia payment of compensation should be offered to an applicant does not give the applicant any right to sue either the board or the Crown for that sum. But it does not follow that a determination of the board in favour of an applicant is without any legal effect upon the rights of the applicant to whom it relates.* (Emphasis is mine). It makes lawful a payment to an applicant which would otherwise be unlawful. The moneys which the board is authorised to distribute are held by the board in a fiduciary capacity and "The Scheme" defines and limits the board's authority to make any payment out of them to anyone. It makes a determination by the board, in the exercise of its judicial functions, that an offer of a particular sum to a particular applicant is justified, a condition precedent to the board's authority in the exercise of its administrative functions to make any payment to that applicant. Any payment made by the board to any person contrary to those instructions, that is, without a prior determination that an offer of that sum to the payee is justified in accordance with the principles laid down in "The Scheme," would constitute a breach of duty by the board as agents of the Crown and could be recovered by the Crown from the recipient as money had and received - at any rate if he had notice of the breach.

It is clear that Diplock LJ had to deal with jurisdiction over the tribunal, and in doing so, stated that under the scheme, payments were made to applicants *ex gratia* and not as a matter of legal right. The Court had no jurisdiction to control the purely administrative discretion. **Once** the board had made a determination in favour of the applicant, **then** legal consequences followed. **If** payment was made contrary to the instructions without prior determination that payment was justified under the scheme, **then** there would be a breach by the board.

In my view, several points are clear. First, none of the authorities cited by the plaintiff show that one can found a cause of action for an *ex gratia* payment based on what the government may have said. Second, the Court has no jurisdiction to control an *ex gratia* payment. In the present case, the plaintiff was unable to show any basis for his claim for any sums of money, whether by "legitimate expectation" or otherwise. Moreover, the plaintiff has in fact already received a grant of $19,050. The other occupiers have also received certain other sums. He has made countless representations to the relevant authorities. His case has been fully considered. On these facts, the Court has no jurisdiction over the alleged shortfall in the *ex gratia* payment.

Accordingly, the plaintiff's claim was dismissed with costs.

Also found at [1991] 3 CLJ 1975